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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SIERRA FOREST LEGACY, SIERRA CLUB, ) Case No: C 07-2646 SBA  
EARTH ISLAND INSTITUTE, and CALIFORNIA )  
NATIVE PLANT SOCIETY, non-profit )  
organizations, )  
Plaintiffs, ) [PROPOSED] ORDER DENYING  
v. ) DEFENDANTS' MOTION TO TRANSFER  
BERNARD WEINGARDT, in his official capacity ) VENUE  
as Regional Forester, Region 5, United States Forest )  
Service, EDWARD COLE, in his official capacity as )  
Forest Supervisor, Sierra National Forest, United )  
States Forest Service, ABIGAIL R. KIMBELL, in )  
her official capacity as Chief of the United States )  
Forest Service, and UNITED STATES FOREST )  
SERVICE, an agency of the United States )  
Department of Agriculture, )  
Defendants. )

1        This case involves a challenge to a decision by defendants Bernard Weingardt, *et al.*  
2 (“defendants”) to approve the Kings River Project (“Project”), which authorizes logging, herbicide  
3 treatments, and prescribed fire on 131,500 acres within Sierra National Forest. Plaintiffs Sierra  
4 Forest Legacy, *et al.* (“plaintiffs”) allege that defendants’ approval of the Project violated the  
5 National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and the National Forest  
6 Management Act (“NFMA”), 16 U.S.C. § 1604. On June 1, 2007, defendants filed a Motion to  
7 Transfer Venue (“Motion”), seeking to move this action to the United States District Court for the  
8 Eastern District of California. Docket No. 11. Plaintiffs filed their opposition to this Motion on  
9 June 14, 2007. Docket No. 17.

10        Federal law provides that “[f]or the convenience of the parties and witnesses, in the interest  
11 of justice, a district court may transfer any civil action to any other district or division where it might  
12 have been brought.” 28 U.S.C. § 1404(a). *See also Florens Container v. Cho Yang Shipping*, 245 F.  
13 Supp. 2d 1086, 1089 (N.D. Cal. 2002) (a court must consider “(1) the convenience of the parties; (2)  
14 the convenience of the witnesses; and (3) the interests of justice”). If more than one appropriate  
15 venue exists, a court must make its decision based upon an “individualized, case-by-case  
16 determination of convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99  
17 (9th Cir. 2000) (quoting *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)).

18        In doing so, the court “considers the private and public factors which might weigh in favor of  
19 each of these alternate venues and measures these assets against those of the plaintiffs’ chosen  
20 forum, the Northern District of California.” *Ellis v. Costco Wholesale Corp.*, 372 F. Supp. 2d 530,  
21 538 (N.D. Cal. 2005). A plaintiff’s choice of forum is entitled to substantial deference, and “[u]nless  
22 the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be  
23 disturbed.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947); *see Decker Coal Co. v.*  
24 *Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986) (“The defendant must make a strong  
25 showing of inconvenience to warrant upsetting the plaintiff’s choice of forum”).

26        In this case, defendants have failed to make a strong showing that the convenience of the  
27 parties and witnesses and the interests of justice would be better served by transferring this case from  
28 plaintiffs’ chosen forum to the Eastern District of California. There is no dispute that the Northern

1 District is an appropriate forum for this case pursuant to the venue provisions in 28 U.S.C. §  
2 1391(e). The fact that plaintiffs maintain offices in both the Northern and Eastern Districts does not  
3 weigh in favor of transferring this case, especially in opposition to plaintiffs' chosen forum.  
4 Moreover, federal agencies and officials such as defendants are regularly sued and defend actions in  
5 district courts all over the country, and defendants have failed to make a strong showing that the  
6 Eastern District would be more convenient for the parties compared to this Court. *See Van Dusen v.*  
7 *Barrack*, 376 U.S. 612, 646 (1964) ("Section 1404(a) provides for transfer to a more convenient  
8 forum, not to a forum likely to prove equally convenient or inconvenient").

9 The convenience of the witnesses and access to documents is also not a relevant  
10 consideration here, since this case will be reviewed under the Administrative Procedure Act, 5  
11 U.S.C. § 706, on the basis of an administrative record that defendants will make readily available to  
12 the parties and the Court. *See Pacific Coast Fed'n of Fishermen's Ass'n v. Gutierrez*, 2006 WL  
13 194507, \*3 (N.D. Cal. Jan. 24, 2006) (finding that "in environmental cases involving challenges to  
14 an administrative record, many of the factors are not applicable, in part because there is no  
15 evidentiary hearing or presentation of witnesses"). Finally, the interests of justice do not warrant a  
16 transfer given the strong public interest in California and nationwide regarding the federal  
17 government's management of our national forest lands, *see, e.g., California ex rel. Lockyer v. U.S.*  
18 *Dept. of Agric.*, 459 F. Supp. 2d 874, 914 (N.D. Cal. 2006) (finding "a strong 'public interest in  
19 preserving our national forests in their natural state'"), as well as the likelihood of delay that would  
20 result from the severe congestion in the Eastern District's docket. Accordingly, defendants have  
21 failed to satisfy their heavy burden to upset plaintiffs' choice of forum, and the Motion to Transfer  
22 Venue is hereby DENIED.

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24 IT IS SO ORDERED.

25 DATED:  
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27 Saundra Brown Armstrong  
28 United States District Judge